

CC HOMES ASSOCIATES, LLC

Petitioner

v.

MONTGOMERY COUNTY, MARYLAND

Respondent

*
 * IN THE MARYLAND TAX COURT
 *
 *
 * Case No. 17-IP-OO-0869
 *
 *
 *
 *
 *
 *

MEMORANDUM AND ORDER

CC Homes Associates, LLC (“Petitioner” or “CC Homes”) appeals to the Maryland Tax Court from a written denial of a claim for refund of Montgomery County Development Impact Tax for Transportation Improvements, the Development Impact Tax for Public School Improvements, and the School Facility Payment (collectively referred to as impact taxes) by the Montgomery County Department of Permitting Services (DPS)) (“Respondent” or “County”). Petitioner and Respondent filed Motions for Summary Judgment, Responses in Opposition and Memorandums of Law. In addition, both parties have agreed to stipulated facts and have requested judgment as a matter of law.

The County determined on August 28, 2017 that Petitioner was not entitled to a reduction in the development impact tax assessment for 52 new market rate townhouses arising from the demolition of 47 garden apartments previously located on its property. The Petitioner asserts that the County’s decision requiring Petitioner to pay the entire development impact tax assessment is inconsistent with the unambiguous statutory language of the County’s development impact tax law for transportation improvements and public school improvements, which are respectively codified

in the Montgomery County Code (hereinafter the "Impact Tax Law"), as well as with the County's clear intent as revealed in legislative history.

A review of the legislative history of the Montgomery County development impact tax indicates that the impact fee was imposed on development to defray the cost of building highways in Germantown and eastern Montgomery County.

The County's impact fee was challenged in Court and the Court of Appeals eventually held that the development impact tax was a valid excise tax and that the County was authorized to impose the tax under its general taxing authority, *Waters Landing Limited Partnership v. Montgomery County*, 337 Md. 15, 650 A.2d 712 (1994). After several amendments to the law since 1986, the current version of the law is codified in Sections 52-39 through 52-51 of the Montgomery County Code, together with the related County Regulations.

In 2002, Montgomery County added two exemptions to the impact tax law: one for any reconstruction or addition on a building which does not add additional gross floor area to the building, and another for a replacement of an existing building, if the replacement building is rebuilt on the same site as the original building within one year. The exemptions were qualified by the following language:

However, if in either case the development impact tax that would be due on the new, reconstructed, or altered building is greater than the tax that would have been due on the previous building if it were taxed at the same time, the applicant must pay the difference between those amounts.

In 2003, Montgomery County added a provision to the impact tax exemption for total demolitions. The bill kept the same provision that required replacement buildings to be rebuilt

within one year, but expanded the location of the replacement building to include the same site “or in the same project” as original construction.

In 2003, Montgomery County also created the Development Impact Tax for Public Schools and the School Facilities Tax which was similar to the transportation impact tax. The current versions of the law set forth in Section 52-41((h)(3) exempt impact taxes from

any building that replaces an existing building on the same site or in the same project (as approved by the Planning Board or the equivalent body in Rockville or Gaithersburg) to the extent of the gross floor area of the previous building, if:

- (A) construction begins within one year after demolition or destruction of the previous building as substantially completed; or
- (B) the previous building is demolished or destroyed, after the replacement building is built, by a date specified in a phasing plan approved by the Planning Board or equivalent body.

However, if in either case the development impact tax that would be due on the new reconstructed, or altered building is greater than the tax that would have been due on the previous building if it were taxed at the same time, the applicant must pay the difference between those amounts.

The County claims Petitioner is not entitled to an exemption from impact tax based on two principal arguments. First, because it did not construct its townhouses on the same site or project as the previous apartment buildings. Secondly, because all the previously owned apartments were exempt from impact tax and thus the replacement building constructed cannot be exempt.

The County also relies on the long-standing principal that tax exempt statutes are to be strictly construed in favor of the government. But, even the “strict construction” of tax exemptions must be fair and does not call for strained or unreasonable construction to the extent of being adverse to the real legislative intention, for the judicial interpretation must always be in accordance with the actual meaning of the lawmaking power.” *Pleasants Invs. Ltd P’ship v. Dep’t of*

Assessments & Taxation, 141 Md. App. 481, 492 (2001). Here, the plain language of the impact tax law requires the County to reduce the impact tax assessment of Petitioner's new market rate townhouses by the assessment of the previously demolished apartments when taxed at the same time. Moreover, the exemption from tax actually results in a credit/offset against the tax.

The 52 new townhouses replaced the 47 garden apartments on the "same site" or in the same project as approved by the Planning Board and in accordance with the Preliminary Plan and Townhouse Site Plan. In addition, the subdivision plats of the property are the same area of land and within the same boundaries where the previous apartments stood and where the new townhouses are constructed. As required under the law Petitioner began construction of its new townhouses within one year after demolition of the previous 47 garden apartments was completed. Accordingly, Petitioner requested that the development impact taxes assessed on Petitioner's 52 market rate townhouses be reduced by the amount of development taxes that would have been generated on the 47 previously existing apartments if taxed at the same time.

The County's second argument disregards the plain language of the Impact Tax law which provides that:

if in either case the development impact tax that would be due on the new, reconstructed, or altered building is greater than the tax that would have been due on the previously building if it were taxed at the same time, the applicant must pay the difference between those amounts.

The critical language which the County does not properly consider is "...if it were taxed at the same time." If the County had intended to impose an impact tax at different times, based on whether the dwelling units were previously exempt, the statutory law should have included the necessary language. The Court shall not read-in such language.

The Impact Tax Law statutory framework and the legislative history supports an interpretation that Petitioner should only be responsible for paying its proportional impact on transportation and public-school facilities, namely, the net increase in dwelling units above the replaced development. The intent of the Impact Tax Law, which is best reflected by the plain language of the statute, is that the new development supports the need for transportation and school capacity above and beyond existing demand. The law requires new development to pay its pro rata share of the costs of impact transportation improvements and public-school improvements necessitated by that development. In fact, this is the stated purposed codified in the Impact Tax Law.

The development impact tax assessment for Petitioner's 52 market rate townhouses should be reduced by \$1,017,579 to reflect the impact tax assessment that would have been due on the 47 apartments demolished by Petitioner when taxed at the same time:

Development Impact Taxes Generated by Petitioner's 52 Market Rate Townhouses:

- Transportation Impact Tax: $52 \times \$11,427 = \$594,204$
- School Impact Taxes: $52 \times \$20,198 = \$1,050,296$
- Total Impact Taxes: $\$1,644,500$

Development Impact Taxes that Would Have Been Generated by 47 Previous Apartments:

- Transportation Impact Tax: $47 \times \$8,886 = \$417,642$
- School Impact Taxes: $47 \times \$12,765 = \$599,955$
- Total Impact Taxes: $\$1,017,597$ (Credit/Offset)

Difference When "Taxed at the Same Time":

- $\$1,644,500 - \$1,017,597 = \$626,903$

It is hereby this 23rd day of January 2019 ordered that the County's Motion for Summary Judgment, is denied and the Petitioner's Motion for Summary Judgment is granted and the impact tax assessment is reduced by \$1,017,597 to \$626,903

CC: Robert C. Park, Jr., Esq.
Taggart B. Hutchinson, Esq.

CERTIFIED TRUE COPY
TEST: John T. Hearn, Clerk

NOTICE: You have the right of appeal from the above Order to the Circuit Court of any County or Baltimore City, wherein the property or subject of the assessment may be situated. The Petition for Judicial Review **MUST** be filed in the proper Court within thirty (30) days from the date of the above Order of the Maryland Tax Court. Please refer to Rule 7-200 et seq. of the Maryland Rules of Court, which can be found in most public libraries.